

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SANTIAGO A.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner Of Social Security,

Defendant.

NO. 1:22-CV-3041-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 12, 13). These matters were submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, Plaintiff's Motion for Summary Judgment (ECF No. 12) is **DENIED**, and Defendant's Motion for Summary Judgment (EFC No. 13) is **GRANTED**.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: The Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158–59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An "error is harmless where it is 'inconsequential to the ultimate nondisability determination.'" *Id.* at

1 1115 (citation omitted). The party appealing the ALJ’s decision generally bears
2 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
3 409–10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
6 the meaning of the Social Security Act. First, the claimant must be unable “to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
11 impairment must be “of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 §§
17 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v). At step one, the Commissioner
18 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
19 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
20

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
6 claimant suffers from "any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

17 If the severity of the claimant's impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
20 defined generally as the claimant's ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
2 404.1545(a)(1), 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
3 analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
7 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
9 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
10 analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
14 the Commissioner must also consider vocational factors such as the claimant's age,
15 education and work experience. *Id.* If the claimant is capable of adjusting to other
16 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
17 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
18 work, the analysis concludes with a finding that the claimant is disabled and is
19 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
4 capable of performing other work; and (2) such work “exists in significant
5 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
6 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 The Plaintiff previously filed Title II and Title XVI applications on February
9 25, 2014. These claims were denied initially on May 16, 2014. Because the
10 Plaintiff did not appeal, these determinations became administratively final.

11 On August 20, 2018, Plaintiff filed an application for Title II disability
12 insurance benefits and Title XVI supplemental security income benefits, alleging
13 an onset date of January 1, 2013. Tr. 16. The applications were initially denied
14 and denied again on reconsideration. *Id.* Plaintiff appeared at a telephonic hearing
15 before an administrative law judge (“ALJ”) on February 2, 2021. *Id.* The ALJ
16 denied Plaintiff’s claim on February 18, 2021. Tr. 12.

17 Although the claimant alleges a disability onset date of January 1, 2013, the
18 period at issue begins on May 17, 2014, the day after the date of the prior
19 administratively final determinations.

1 The ALJ found Plaintiff meets the insured status requirements of the Social
2 Security Act through March 31, 2018. Tr. 19. At step one of the sequential
3 evaluation, the ALJ found Plaintiff had not engaged in substantial gainful activity
4 since May 17, 2014, the day after the date of the prior administratively final
5 determinations. *Id.* At step two, the ALJ found Plaintiff had the following severe
6 impairments: left eye blindness, obesity, gout, depressive disorder, borderline
7 personality disorder, anxiety disorder, post-traumatic stress disorder (PTSD), and
8 substance abuse in remission. *Id.* At step three, the ALJ found Plaintiff did not
9 have an impairment or combination of impairments that meets or medically equals
10 the severity of a listed impairment. Tr. 20. The ALJ then found Plaintiff had a
11 residual functional capacity to perform light work with the following limitations:

12 [Plaintiff] is capable of engaging in simple, repetitive, routine tasks in
13 two-hour increments. He will have no contact with the public. He is
14 capable of working in proximity to but not in coordination with co-
15 workers. He will have occasional contact with supervisors. He will
16 occasionally stoop. He will never crouch, crawl, kneel, or climb
17 ramps, stairs, ropes, ladders or scaffolds. He will not work at heights.
18 He will not balance or work in proximity to hazardous conditions. He
19 will not walk across uneven surfaces.

20 Tr. 22.

At step four, the ALJ found Plaintiff was unable to perform past relevant
work. Tr. 29. However, based on the vocational expert's hearing testimony, the
ALJ also considered alternative jobs and concluded that, based on Plaintiff's age,

1 education, work experience, and residual functional capacity, there were other jobs
2 that existed in the significant numbers in the national economy that Plaintiff could
3 perform, such as mail clerk, electrical accessories assembler, and office helper. Tr.
4 31. The ALJ concluded Plaintiff was not under a disability, as defined in the
5 Social Security Act, from May 17, 2014 through February 18, 2021, the date of the
6 ALJ's decision. *Id.*

7 ISSUES

- 8 1. Whether the ALJ improperly rejected Plaintiff's subjective symptom
9 testimony; and
- 10 2. Whether the ALJ improperly evaluated the medical opinion evidence.

11 DISCUSSION

12 A. Plaintiff's Symptom testimony

13 Plaintiff contends the ALJ improperly discredited his subjective symptom
14 testimony. ECF No. 12 at 5-10. An ALJ engages in a two-step analysis to
15 determine whether a claimant's subjective symptom testimony can be reasonably
16 accepted as consistent with the objective medical and other evidence in the
17 claimant's record. Social Security Ruling ("SSR") 16-3p, 2016 WL 1119029, at
18 *2. "First, the ALJ must determine whether there is 'objective medical evidence of
19 an underlying impairment which could reasonably be expected to produce the pain
20 or other symptoms alleged.'" *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir.

2012) (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The claimant is not required to show that her impairment ‘could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are insufficient; rather, the ALJ must identify what symptom claims are being discounted and what evidence undermines these claims. *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why he or she discounted claimant’s symptom claims). “The clear and convincing [evidence] standard is the most demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

The ALJ is instructed to “consider all of the evidence in an individual’s record,” “to determine how symptoms limit ability to perform work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,

1 persistence, and limiting effects of a claimant's symptoms, the following factors
2 should be considered: (1) daily activities; (2) the location, duration, frequency, and
3 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
4 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
5 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
6 other than medication, an individual receives or has received for relief of pain or
7 other symptoms; (6) any measures other than treatment an individual uses or has
8 used to relieve pain or other symptoms; and (7) any other factors concerning an
9 individual's functional limitations and restrictions due to pain or other symptoms.
10 *Id.* at *7–8; 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

11 Here, the ALJ found Plaintiff's impairments could reasonably be expected to
12 cause the alleged symptoms; however, Plaintiff's statements concerning the
13 intensity, persistence, and limiting effects of those symptoms were not entirely
14 consistent with the medical evidence and other evidence in the record. Tr. 23. In
15 arriving at this conclusion, the ALJ considered several of the factors listed above.

16 Plaintiff only challenges that the ALJ improperly considered lack of medical
17 findings, prior work history, that Plaintiff said he was going to look for work,
18 difficulty coordinating rides, and his daily activities. However, Plaintiff does not
19 challenge a number of other reasons given by the ALJ for discounting Plaintiff's
20 symptom testimony.

1 The ALJ considered that the medical evidence does not support a finding
2 that the Plaintiff is as visually limited as he alleges. Tr. 23. The ALJ cited
3 multiple instances of eye examinations with unremarkable findings, many
4 instances where Plaintiff reported no visual problems or changes, and little if any
5 requests for examination or treatment. *Id.* The ALJ concluded that Plaintiff's had
6 left eye blindness, but his limitations are not as severe as he described. *Id.*

7 The ALJ confirmed that the record showed Plaintiff was diagnosed with
8 gout. Tr. 23-24. The ALJ found that Plaintiff may have limitations due to gout,
9 most records show the Plaintiff exhibited no signs of acute distress, normal gait
10 and posture, no edema, full range of motion, as well as normal strength and
11 sensation. *Id.* The ALJ also reasoned that the record shows few complaints to
12 providers by the Plaintiff of an inability to wear shoes due to swelling, nor does the
13 record show many complaints to providers that he was unable to grip, grasp, or
14 hold objects, contrary to his allegations. *Id.*

15 The ALJ noted Plaintiff's mental allegations. Tr. 24. To address his
16 symptoms, the Plaintiff was treated with psychotropic medication, individual and
17 group counseling, and case management services. *Id.* The ALJ found that
18 Plaintiff's mental status examination findings do not corroborate his alleged degree
19 of debilitating mental impairment. *Id.* The ALJ found that most treatment records
20 show the claimant was cooperative, oriented, and interactive with appropriate

1 mood and affect, the ability to articulate well, normal speech and language, normal
2 eye contact, and normal thought content. He demonstrated normal ability to
3 perform basic computations and apply basic reasoning. His associations were
4 usually intact. Providers typically observed his appropriate insight and judgment,
5 his ability to recall recent and remote events, his intact fund of knowledge, as well
6 as his normal attention span and ability to concentrate. *Id.* Plaintiff even stated
7 that his medications were “working wonders.” *Id.*

8 The ALJ noted some inconsistencies in the record concerning his ability to
9 work after the violent incident that left him blind in the left eye, that he was going
10 to look for work in Seattle, and that he was unable to seek and attend treatment
11 without transportation, yet he traveled for other things. Tr. 25. A claimant’s
12 search for employment while allegedly disabled is a proper basis in discounting a
13 claimant’s testimony. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227
14 (9th Cir. 2009). Additionally, the ALJ noted inconsistencies related to Plaintiff’s
15 activities which included mowing the lawn, raking leaves, and breaking branches
16 for a couple of hours to keep his mother’s yard nice, lifting weights, works for 30
17 days dumping grapes, working in the woods, moving a wood pallet, working with
18 construction equipment and driving a car. Tr. 25-26.

19 Plaintiff argues the ALJ failed to provide specific findings with clear and
20 convincing evidence and essentially discounted Plaintiff’s symptom testimony by

1 finding the objective medical evidence did not support his claims. The Court
2 disagrees. While an ALJ may not discredit a claimant's symptom testimony and
3 deny benefits solely because the degree of the symptoms alleged is not supported
4 by objective medical evidence, objective medical evidence is still a relevant factor.
5 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The objective medical
6 evidence supports the ALJ's findings. Moreover, the ALJ considered other factors
7 beyond the objective medical evidence. Thus, the Court finds the ALJ's
8 conclusion regarding Plaintiff's subjective symptom testimony was clear,
9 convincing, and properly supported by substantial evidence.

10 **B. Medical Opinion**

11 Plaintiff challenges the ALJ's evaluation of the medical opinions of David
12 T. Morgan, Ph.D., Tasmyn Bowes, Psy.D., Victoria McDuffee, Ph.D., Wayne C.
13 Dees, Psy.D., Steven Johansen, Ph.D., and R. Renee Eisenhauer, Ph.D. ECF No.
14 12 at 12-20.

15 Plaintiff argues the ALJ failed to properly consider and weigh the medical
16 opinion evidence. ECF No. 16 at 19–20. As an initial matter, for claims filed on
17 or after March 27, 2017, new regulations apply that change the framework for how
18 an ALJ must evaluate medical opinion evidence. 20 C.F.R. §§ 404.1520c,
19 416.920c; *see also Revisions to Rules Regarding the Evaluation of Medical*
20 *Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017). The ALJ

1 applied the new regulations because Plaintiff filed his Title II and XVI claims after
2 March 27, 2017.

3 Under the new regulations, the ALJ will no longer “give any specific
4 evidentiary weight . . . to any medical opinion(s).” *Revisions to Rules*, 2017 WL
5 168819, 82 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider and
6 evaluate the persuasiveness of all medical opinions or prior administrative medical
7 findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b).
8 The factors for evaluating the persuasiveness of medical opinions and prior
9 administrative medical findings include supportability, consistency, relationship
10 with the claimant, specialization, and “other factors that tend to support or
11 contradict a medical opinion or prior administrative medical finding” including but
12 not limited to “evidence showing a medical source has familiarity with the other
13 evidence in the claim or an understanding of our disability program’s policies and
14 evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–(5).

15 The ALJ is required to explain how the most important factors,
16 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),
17 416.920c(b)(2). These factors are explained as follows:

18 (1) *Supportability*. The more relevant the objective medical evidence and
19 supporting explanations presented by a medical source are to support his
20 or her medical opinion(s) or prior administrative medical finding(s), the
more persuasive the medical opinions or prior administrative medical
finding(s) will be.

(2) *Consistency*. The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.

20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

The ALJ may, but is not required to, explain how “the other most persuasive factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§ 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical opinions or prior administrative findings “about the same issue are both equally well-supported . . . and consistent with the record . . . but are not exactly the same,” the ALJ is required to explain how “the most persuasive factors” were considered. 20 C.F.R. §§ 404.1520c(b)(2) 416.920c(b)(2).

These regulations displace the Ninth Circuit’s standard that require an ALJ to provide “specific and legitimate” reasons for rejecting an examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the ALJ’s decision for discrediting any medical opinion “must simply be supported by substantial evidence.” *Id.*

The ALJ found the opinions of several DSHS examiners unpersuasive: David T. Morgan, Ph.D. (January 2020 opinion); Tasmyn Bowes, Psy.D. (March 2018 opinion); Victoria McDuffee, Ph.D. (January 2014 opinion); Wayne C. Dees, Psy.D. (April 2013 opinion). Tr. 28. The ALJ reasoned that these examiners reviewed few outside treatment records and had little foundation beyond Plaintiff’s

1 subjective reports during these one-time examinations. *Id.* The ALJ also rejected
2 their opinions of “marked” limitations and “very significant” limitation because
3 they did not provide specific rationale to explain their assessments. *Id.* Further,
4 the examiners’ opinions were not entirely consistent with their own internal mental
5 status examination findings. *Id.* Specifically, in 2020, Dr. Morgan also observed
6 that the claimant’s appearance, speech, attitude and behavior, thought process and
7 content, orientation, perception, fund of knowledge, concentration, abstract
8 thought, and insight and judgment were all within normal limits. Tr. 28-29. In
9 2018, Dr. Bowes also observed normal appearance, speech, orientation, thought
10 process and content, fund of knowledge, abstract thought, and insight and
11 judgment. Tr. 29. In 2014, Dr. McDuffee also observed normal appearance,
12 speech, attitude and behavior, orientation, perception, fund of knowledge, and
13 abstract thought. *Id.* In 2013, Dr. Dees also observed the claimant’s normal
14 appearance, speech, attitude and behavior, thought process and content, memory,
15 abstract thought, and insight and judgment. *Id.* Additionally, the ALJ explained
16 that the DSHS examiners opinions were inconsistent with the record as a whole.
17 *Id.*

18 The ALJ also did not find persuasive the DSHS Review of Medical
19 Evidence forms completed in January 2014 and April 2018 by non-examining
20 DSHS physicians Steven Johansen, Ph.D. and R. Renee Eisenhauer, Ph.D. Tr. 29.

1 These forms were based upon the DSHS examiners' cursory reports in support of
2 state disability eligibility for which the ALJ already found to be unpersuasive.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, this Court concludes
5 that the ALJ's decision is supported by substantial evidence and free of harmful
6 legal error.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. Plaintiffs Motion for Summary Judgment (ECF No. 12) is **DENIED**.
9 2. Defendant's Motion for Summary Judgment (ECF No. 13) is

10 **GRANTED.**

11 The District Court Executive is directed to enter this Order and Judgment
12 accordingly, furnish copies to counsel, and **close** the file.

13 DATED September 28, 2022.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge